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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of KAREN and
THOMAS C. FROST.

KAREN M. FROST,

Appellant,

v.

THOMAS C. FROST,

Respondent.

D054485

(Super. Ct. No. D428519)

APPEAL from an order of the Superior Court of San Diego County, Edlene C.

McKenzie, Commissioner. Affirmed.

Karen Frost appeals from an order modifying the spousal support obligation of her former husband, Thomas Frost,¹ and terminating the court's jurisdiction "on the first to occur of either party's death, [Karen's] remarriage, or January 1, 2011." She contends the

¹ As is conventional in family law matters and not out of disrespect, we refer to the parties by their first names.

family court erred as a matter of law by (1) terminating its jurisdiction to order spousal support; (2) concluding that she had the ability to become self-supporting; (3) stepping down support from \$6000 a month to zero; and (4) finding that a spouse should become self-supporting within one half the length of the marriage without clarifying that the rule is assertedly inapplicable to long term marriages like theirs. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Karen and Thomas separated in June 1996 after a 16½ year marriage. Thomas began making voluntary spousal support payments to Karen in March 1996.²

In October 1999, the parties entered into a marital settlement agreement (MSA) that was effective as of August 11, 1998, and incorporated into a judgment filed in November 1999. Under the MSA, the parties agreed that Thomas, who was then earning a gross annual income of \$201,164, would pay Karen \$2,600 per month in spousal support. Karen had no income at the time. They agreed the family court would retain jurisdiction to decide whether the support order was sufficient to meet Karen's needs and whether her needs were consistent with their marital standard of living.

In the MSA, Karen acknowledged the Family Code section 4330, subdivision (b)³ admonition that each party shall make reasonable and good faith efforts to become self-supporting and that a failure to do so may be one of the factors considered by the court as a basis for modifying or terminating support. Karen also acknowledged " '[t]he goal that

² Thomas also paid Karen child support, but such support is not at issue on appeal. We thus omit factual details concerning his child support payments in this opinion.

³ Statutory references are to the Family Code unless otherwise indicated.

the supported [spouse] shall be self-supporting within a reasonable period of time' " and that a reasonable period of time for purposes of then section 4320, subdivision (k) " 'shall be one half the length of the marriage.' " The MSA provision continues:

" 'However, nothing in this section is intended to limit the Court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section and the circumstances of the parties.' "

In December 2002, Karen sought and later successfully obtained a modification of spousal support. Finding Thomas's income to be over \$37,000 per month, the family court ordered him to pay \$8,000 in monthly spousal support commencing January 1, 2003. It found Karen's monthly income to be \$1,700. At the conclusion of that hearing, the family court reminded Karen that she had a duty to become self-sufficient and advised her that spousal support would not be a permanent part of her life: "The Gavron admonition I have given in 1999 that has the language in it that the supporting parties shall become self-sufficient in a reasonable period of time. That needs to happen. Spousal support is not going to be a permanent part of her life. I think at this juncture, she is well aware of the fact that this is something she needs to do. But she doesn't have any training, education or background that lends her to a position, aside from what she did in your corporation or your business, sir."

In June 2007, Thomas filed an order to show cause to modify spousal support, in part based on his assertion that Karen had a reduced need for support due to her increased earnings and reduced monthly expenses due to cohabitation with a boyfriend. He pointed to earnings Karen had made from various real estate investments and sales of two

residential properties in July 2000 and October 2003 resulting in gross profits of \$500,000 and \$550,000 respectively. In a declaration, Thomas averred that Karen was the owner and founder of a company selling "knock off" designer handbags, and also was employed at a boutique in Poway.

Thomas also submitted a May 2003 report from a vocational rehabilitation expert concerning Karen's current and potential wage earning capacity. That expert reported that Karen, who had previously worked for Thomas's family-owned business for 14 years as an administrative assistant, was "grossly under-employed" as a jewelry and handbag salesperson selling through home and office parties, averaging \$60.38 per week. She observed that Karen had no medical conditions that would interfere with her ability to work. The expert concluded that with her skills and interests, Karen could be employed in various capacities and earn from \$16,000 to \$42,000 per year, but that she had not been involved in any job search to date.

In response, Karen maintained Thomas's assertions as to her earnings and cohabitation were unfounded. Characterizing her friend Jason Cunningham as an investment partner, she stated she was not dating him exclusively or cohabitating with him. She stated she did not have a reduced need for support, but instead was dependent on Thomas's support to care for their son, who had mental health problems. She asked for an increase in support to maintain their marital standard of living.

Thomas then submitted evidence from private investigators showing mail directed to Cunningham at Karen's residence in Encinitas as well as Cunningham's comings and goings from that residence. He also submitted Karen's October 2007 deposition, in which

she admitted that since May 2003, she had never followed the vocational expert's advice to prepare a detailed resume or cover letter, apply for any positions, attend free library sessions for Internet job search training, place her resume on any job boards, contact an employer-paid recruiter, contact local schools for job listings, or contact career centers or counselors regarding employment. Though she had made one "cold call" in the four years since she had seen the vocational expert, she testified she never submitted any formal application after that call. Karen testified she researched newspaper advertisements on Sundays, took a part-time computer class for four months, and attended one retail job fair in Los Angeles for her employer, for which she was paid \$10 an hour. Thomas pointed out that as of November 4, 2007, he would have paid Karen spousal support for 11 years and 5 months.

On May 22, 2008, after an oral hearing, the family court issued its tentative statement of decision. Thomas objected and suggested modifications that were ultimately incorporated into the final statement of decision.⁴ In its June 30, 2008 final statement of decision, the court made numerous detailed findings of fact and conclusions of law, including that Thomas had proven there had been a material change of circumstances in that Karen was now cohabitating with another person, and Karen had failed to rebut the presumption that there was a decreased need for support. Emphasizing the policy that a supported spouse become self-supporting within a reasonable period of time, and noting

⁴ Karen also filed a declaration objecting to the statement of decision, which Thomas moved to strike as untimely. The commissioner ruled her declaration untimely and declined to consider it. Karen does not challenge that ruling on appeal.

the principle that failure to do so despite a warning constituted a change of circumstances, the court found Karen had failed to diligently pursue gainful employment in an effort to become self-supporting despite admonitions to do so in November 1999 and July 2003.

The court made further factual findings as to Karen's marketable skills and job market for them, the time and expense for Karen to acquire appropriate education or training to develop those skills, Karen's possible need for retraining or education, the extent Karen's present or future earning capacity was impaired by periods of unemployment during marriage, the extent to which Karen contributed to Thomas's attainment of education or career, Thomas's ability to pay Karen, the parties' obligations and assets, the marriage's long-term status, Karen's ability to engage in gainful employment without interfering with the interests of dependent children, the parties' age and health, the immediate and specific tax consequences to each party, the balancing of hardships, and other factors deemed just and equitable.

In particular, the court found Karen had limited marketable skills, but that she knew how to use the Internet and had previously worked as a bank teller, fry cook, and general office person. It found the parties had no minor children since July 8, 2004, but had an adult son who suffered from a mental illness requiring some care by Karen. Referencing the vocational evaluation, the court stated that Karen had made little or no attempt to train or educate herself to allow her more lucrative employment. As to the balance of hardships, it found Thomas was able to continue to make spousal support payments to Karen with negligible impact on his lifestyle if any, and Karen would be

impacted by a decrease in spousal support. As to other just and equitable factors, the court gave "great weight to the lack of effort [Karen] has made in becoming self-supporting since the last admonishment to do so almost five years ago." It stated its belief "that [Karen] has ignored the repeated admonishments of the court to take action to become self-supporting" and "[a]ny efforts [Karen] may have taken to become self-supporting have been token." The court concluded it believed Karen's inaction prevented her from being self-supporting.

On these findings, the court granted Thomas's modification request in part, ordering him to pay Karen \$6,000 per month in spousal support beginning July 1, 2008, through December 1, 2008, \$4,000 per month beginning January 1, 2009, through December 1, 2009, and \$2,000 per month beginning January 1, 2010, through December 1, 2010. It ruled Thomas's "obligation to pay spousal support and the Court's jurisdiction over spousal support shall expire on the first to occur of either party's death, Wife's remarriage or January 1, 2011." Karen filed this appeal.

DISCUSSION

I. *Standard of Review*

A family court's order modifying a spousal support award is normally reviewed on appeal for abuse of discretion. (*In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1235 (*Shaughnessy*); *In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 47.) Though she recognizes the existence of conflicting evidence on the question and correctly acknowledges that we review factual findings for substantial evidence, Karen contends we should apply a de novo standard of review because the family court "erred as a matter

of law" in reaching its ruling, including by placing an undue amount of weight on her lack of effort in becoming self-supporting and terminating its jurisdiction over spousal support. She argues generally that questions of law are reviewed de novo and thus the trial court's factual findings are "immaterial." She also points out that appellate courts independently determine the proper interpretation of a statute as a matter of law.

We are not persuaded that a different review standard applies. Karen's authorities pertain to general principles as to de novo review of legal questions and the benefits of de novo review in such cases; none discuss or involve a situation where a trial court has ordered a modification of spousal (or even child) support in a marriage case under relevant Family Code provisions.

Setting that shortcoming aside, Karen's cited cases are entirely distinguishable as to the type of disputes presented. In one, pertaining to a claim for recovery of statutory attorney fees, the appellate court expressly acknowledged that there were no "relevant evidentiary disputes" and the trial court's determination did not require an exercise of discretion, and on that basis held the appeal, which did not involve resolution of disputed facts, was subject to de novo review. (*Topanga and Victory Partners v. Toghia* (2002) 103 Cal.App.4th 775, 779-780.) The circumstances here in connection with Thomas's petition to modify spousal support are to the contrary because they involve vigorously disputed facts and the trial court's obligation to evaluate and weigh numerous factual factors under section 4320. (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1247; *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283, 308.) We find no basis to apply de novo review in assessing the trial court's order and its subsidiary findings. Rather, we

review the family court's discretionary decision under the settled abuse of discretion standard in view of the trial court's "broad discretion" in weighing the numerous statutory factors. (*Shaughnessy*, at pp. 1235, 1243.)

Further, in reviewing findings supporting a trial court's exercise of discretion in modifying spousal support, we accept as true all evidence supporting the trial judge's findings, resolve all conflicts in the evidence in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the judgment. (*In re Marriage of Stephenson* (1995) 39 Cal.App.4th 71, 82, fn. 5; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 [appellate court will imply findings to support the judgment in favor of prevailing party].)

II. *Applicable Legal Standards*

A court may modify a spousal support order only on a showing — made by the party seeking modification — of a material change in circumstances after the last order based on the current facts and circumstances. (*In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572, 575; see *In re Marriage of Schmir*, *supra*, 134 Cal.App.4th at p. 47.)

"[A] material change of circumstances warranting a modification of spousal support may stem from unrealized expectations embodied in the previous order. [Citation.]

Specifically, changed expectations pertaining to the ability of a supported spouse to become self-supporting may constitute a change of circumstances warranting a

modification of spousal support. [Citation.] Thus, if a court's initial spousal support

award contemplates that a supported spouse will take some action to decrease the need

for spousal support following the issuance of the order and the supported spouse fails to

take that action, the court may modify the award on the ground of changed circumstances." (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1238; see also *In re Marriage of West* (2007) 152 Cal.App.4th 240, 247.)

" 'In exercising discretion whether to modify a spousal support order , "the court considers the same criteria set forth in section 4320 as it considered when making the initial order " ' " (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1235; *In re Marriage of Stephenson, supra*, 39 Cal.App.4th at pp. 77-78.) The section 4320 criteria include the extent to which each party's earning capacity is sufficient to maintain the standard of living established during the marriage taking into account the supported party's marketable skills and periods of unemployment; the supporting party's ability to pay spousal support; the parties' respective needs based on the marital standard of living, obligations and assets including their separate property; their ages and health; the duration of the marriage; and the supported spouse's ability to engage in gainful employment. (§ 4320, subds. (a)-(h); *In re Marriage of Stephenson*, at p. 78; *In re Marriage of Baker* (1992) 3 Cal.App.4th 491, 496.) The court must also consider the "balance of the hardships" to the parties and "[a]ny other factors [it] determines are just and equitable." (§ 4320, subds. (k), (n).)⁵

⁵ In full, section 4320 states: "In ordering spousal support under this part, the court shall consider all of the following circumstances: [¶] (a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: [¶] (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other,

In undertaking this inquiry, "the trial court must follow established legal principles and base its findings on substantial evidence. If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court." (*In re Marriage of Schmir, supra*, 134 Cal.App.4th at p. 47, fn. omitted.) Under the abuse of discretion standard, we do not disturb the trial court's ruling unless, "considering all the relevant circumstances, the court has 'exceeded the bounds of reason' or it can 'fairly be said' that no judge would

more marketable skills or employment. [¶] (2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties. [¶] (b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party. [¶] (c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living. [¶] (d) The needs of each party based on the standard of living established during the marriage. [¶] (e) The obligations and assets, including the separate property, of each party. [¶] (f) The duration of the marriage. [¶] (g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party. [¶] (h) The age and health of the parties. [¶] (i) Documented evidence of any history of domestic violence, as defined in Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party. [¶] (j) The immediate and specific tax consequences to each party. [¶] (k) The balance of the hardships to each party. [¶] (l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a 'reasonable period of time' for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties. [¶] (m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325. [¶] (n) Any other factors the court determines are just and equitable."

reasonably make the same order under the circumstances." (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.)

III. *Determination as to Karen's Ability to Become Self-Supporting*

Karen contends the family court erred as a matter of law in its determination of her ability to become self-supporting. As we understand her argument, she suggests the family court applied the wrong standard in determining her potential for self-sufficiency for purposes of terminating spousal support; that the court was required to find she is able to be "financially independent" under *In re Marriage of Morrison* (1978) 20 Cal.3d 437, 453 (*Morrison*). She poses: "Alternatively stated, by what measure do we then use to establish the future needs of the supported spouse?" Karen argues "that the 'future needs' standard must include consideration of the living standard of the community. In short, *if there is no reasonable prospect for a supported spouse to become self supporting to the standard set by the community, it is error to terminate spousal support.*" (Italics added.)

Karen provides no persuasive legal argument or authority for her proposed "reasonable prospect . . . [of] self support[] to the standard set by the community" test for purposes of determining future needs. We find no basis for such a test in *Morrison*, *supra*, 20 Cal.3d 437 or any other case otherwise relied upon by Karen. Absent any such authority, we decline to apply such a test. (See *In re Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1392-1393.)

Further, Karen's arguments are misplaced. The relevant inquiry is whether the trial court was authorized to consider Karen's efforts (or lack thereof) in seeking to become self-supporting as a change in circumstance justifying modification of spousal

support, and whether substantial evidence in the record supports its finding that she failed to diligently pursue gainful employment to that end. Given the legislative policy goal expressed in section 4320, subdivision (I), and as this court has previously held in *Shaughnessy, supra*, 139 Cal.App.4th at page 1238, the family court was certainly authorized to consider Karen's efforts to seek employment that would provide her with income toward self-sufficiency, and it was well within its discretion to give that matter great weight. (*In re Marriage of Smith, supra*, 225 Cal.App.3d at p. 481 [in the final analysis, the trial court possesses broad discretion to decide the applicability and weight of the section 4320 factors]; see *In re Marriage of Baker, supra*, 3 Cal.App.4th at pp. 499-500 [trial courts must have broad discretion in weighing and balancing the various factors in each particular marriage before making a suitable support award].)

In view of the evidence as to the November 1999 and July 2003 admonitions to Karen to become self-sufficient, Karen's prior work experience and marketable skills, her deposition testimony as to her minimal efforts to pursue gainful employment, and the passage of more than five years since she was advised by a vocational counselor about reasonable efforts she could undertake to secure a job, there is ample evidence to support the finding that she did not make reasonable efforts to become self-sufficient since she was first warned to do so in November 1999. Indeed, Karen does not meaningfully challenge the sufficiency of the evidence supporting the family court's findings on this point. Thus, her arguments are unavailing under the applicable abuse of discretion standard.

IV. *Step Down Order*

Karen challenges the family court's step-down order by distinguishing case authority on grounds that in those cases, "the wife . . . had the realistic and meaningful opportunity to actually retrain or change careers that would bring her earnings to the living standard of the community." She then states, "In this case Karen did not have that opportunity, gradual or otherwise. In fact, the trial court made no such finding of actual expectations or potential expectations given a reasonable effort. The failure to make a finding is error requiring reversal." Karen argues the absence of this type of finding shows the family court terminated support as a punitive measure and its findings were not supported by the evidence. Karen apparently also challenges the evidence to support the family court's decision to permanently terminate spousal support.

Karen's arguments ignore several aspects of the family court's order. Its statement of decision reveals it considered each of the relevant factors specified in section 4320; indeed, Karen does not argue otherwise. Once the court does so, its decision will not be reversed on appeal absent an abuse of discretion. (*In re Marriage of Cheriton, supra*, 92 Cal.App.4th 269, 283.) Further, Karen ignores the court's finding that her need for spousal support was reduced by her cohabitation with Jason Cunningham, which constituted a material change in circumstances justifying a modification or termination of

support. (§ 4323 subd. (a)(1).⁶) Likewise, a supported spouse's failure to make good-faith efforts to become self-supporting can constitute a change in circumstances that warrants reduction or termination of spousal support as long as the supported spouse was given reasonable advance warning that after an appropriate period of time he or she was expected to become self-sufficient, as Karen was here. (*In re Marriage of Gavron* (1988) 203 Cal.App.3d 705, 712; *In re Marriage of Schmir, supra*, 134 Cal.App.4th at p. 55.) Karen's financial self-sufficiency within a reasonable period of time was a key provision of the parties' MSA and the judgment of dissolution, and thus it was a matter within the parties' reasonable and express expectations at that time. Finally, because Karen and Thomas had been divorced for over eight years (and separated for over 12) at the time of the modification hearing, the family court could have reasonably concluded, and we infer it did find, that the marital standard of living was "deserving of less weight in balancing the section 4320 factors." (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1248; see also *In re Marriage of Rising* (1999) 76 Cal.App.4th 472, 478-479, fn. 9.)

⁶ Section 4323, subdivision (a)(1) provides: "Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex. Upon a determination that circumstances have changed, the court may modify *or terminate* the spousal support as provided for in Chapter 6 (commencing with Section 3650) of Part 1." (Italics added.) The court specifically found that Karen owned the Encinitas property in which she lived with Cunningham as tenants in common and that she and Cunningham had no written agreement governing the terms of an investment agreement between them. It also found "Mr. Cunningham pays the majority of the monthly payments on the first and second trust deed on the property and also the gardener," that he kept a computer at the Encinitas residence and worked out in a gym there, received mail there, kept several vehicles there, and was seen entering and exiting the residence at various times in the early morning in the fall of 2007.

Karen's argument that she "did not have [an] opportunity, gradual or otherwise" to retrain or change careers is contradicted by the record, which demonstrates, via the May 2003 vocational evaluation, she had the ability and experience to secure employment in various careers, including as a bank teller, receptionist/information clerk or administrative assistant. The family court found that Karen "failed to heed the reasonable recommendations of the vocational evaluator and made little or no attempt to train or educate herself in a manner that would allow her more lucrative employment," which implies a subsidiary finding that Karen had opportunities to seek such training in the many years since she was first advised to take steps to become self-supporting in November 1999. (See *In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133.) Implicit in the family court's finding here is that Karen's ability to become self-supporting was a reasonable expectation, and that implied finding is supported by the parties' MSA, evidence that Karen worked during their marriage, was not disabled or otherwise physically unable to work, and was capable of employment that would provide her with financial independence under the circumstances of her reduced needs. The court could also reasonably find Karen's conduct violated section 4320, subdivision (l) and the express public policy described by our Supreme Court in *In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 53 that provides support may be paid only so long as necessary for the supported spouse to become self-supporting. It is not our role to revisit the family court's express and implied factual determinations on these points.

Nothing else in Karen's arguments convinces us to conclude the family court unreasonably exercised its discretion or somehow exceeded the bounds of reason in

reaching the step down order. (*In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1360; *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.) There is no requirement for such an order that there be evidence that the supported spouse will certainly be earning the presumed income (*In re Marriage of West, supra*, 152 Cal.App.4th 240, 248), and based on the evidence summarized above, it was not speculative for the court to conclude, implicitly, that Karen's income could, and should, increase by January of 2011. (*Ibid.* [step down orders must be based on reasonable inferences to be drawn from the evidence].) Under the circumstances, we shall not "substitute our own judgment for that of the trial court, but determine only if any judge reasonably could have made such an order." (*In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753.) Hence, we conclude the court did not abuse its discretion in entering a step down order eventually terminating support to zero as of January 1, 2011.

V. *Finding under Section 4320 as to Goals of Self-Support*

Karen faults the family court for its finding as to the Legislature's goal that a supported spouse shall be self-supporting within a reasonable period of time and that such period for purposes of that section " 'shall be one half the length of the marriage ' " She maintains the court incorrectly stated the law because it failed to acknowledge the standard did not apply to their long term marriage (§ 4336⁷) and she

⁷ Section 4336, entitled "Retention of Jurisdiction," provides in part: "(a) Except on written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely in a proceeding for dissolution of marriage or for legal separation of the parties where the marriage is of long duration. [¶] (b) For the purpose of retaining jurisdiction, there is a presumption affecting the burden

suggests it consequently applied the wrong standard to its determination as to the point by which she must become self-supporting.

The family court's final statement of decision correctly states the legislative policy in effect at the time of the hearing and its decision. The court found: "The legislative policy is clear that the goal under present circumstances is that a supported party become self-supporting within a reasonable period of time which, except in the case of a long marriage, is generally deemed to be one half of the marriage." However, the long term marriage exception was not the applicable standard for purposes of these parties' marriage.

Karen misunderstands the statute's application to her particular circumstances. The parties separated in June 1996 and their marital status ended on January 4, 1999. The exception for cases of marriage of long duration in section 4320, subdivision (*l*) was not in place at that time, and does not apply.⁸ Further, the statute itself acknowledges (as

of producing evidence that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration. However, the court may consider periods of separation during the marriage in determining whether the marriage is in fact of long duration. Nothing in this subdivision precludes a court from determining that a marriage of less than 10 years is a marriage of long duration. [¶] (c) Nothing in this section limits the court's discretion to terminate spousal support in later proceedings on a showing of changed circumstances."

⁸ Section 4320 was amended in September 1999 (Stats. 1999, ch. 846) to add the phrase, "Except in the case of a marriage of long duration as described in Section 4336" to then subdivision (k) (now subdivision (*l*)) of the statute. The Historical and Statutory Notes for section 4320 reference a letter from Senators O'Connell and Schiff to the California Senate stating in part that "the bill should affect only those dissolutions of marriage and legal separations occurring on and after January 1, 2000, and any orders for spousal support relating to dissolutions of marriage and legal separations prior to that

did the parties' MSA), that the statute provides only a recommendation to guide the trial court in exercising its discretion to determine spousal support orders. (§ 4320, subd. (l) ["[N]othing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties"].) Karen has not shown prejudicial error in the family court's finding on this point, or its implied finding that January 1, 2011 — more than 11 years after she was first warned — would constitute a reasonable period of time for Karen to become self-sufficient.

VI. *Order Terminating Jurisdiction*

"The court possesses broad discretion in balancing all of the applicable factors . . . and making a determination whether or not to divest itself of jurisdiction over spousal support on a certain date." (*In re Marriage of Baker, supra*, 3 Cal.App.4th at p. 498 [applying predecessor of section 4336].) However, "[a] trial court should not terminate jurisdiction to extend a future support order after a lengthy marriage, unless the record clearly indicates that the supported spouse will be able to adequately meet his or her financial needs at the time selected for termination of jurisdiction. In making its decision concerning the retention of jurisdiction, the court must rely only on the evidence in the record. . . . If the record does not contain evidence of the supported spouse's ability to meet his or her future needs, the court should not 'burn its bridges' and fail to retain jurisdiction." (*Morrison, supra*, 20 Cal.3d 437, 453; accord *In re Marriage of Vomacka*

date should be governed by the rules existing at the time the judgment of dissolution or legal separation is entered." (Historical and Statutory Notes, 29F West's Ann. Fam. Code (2004 ed.) foll. § 4320, p. 223.)

(1984) 36 Cal.3d 459, 467-468.) Based on all of Thomas's evidence we have summarized above, we conclude this record contains sufficient evidence of Karen's ability to meet her future needs as of January 1, 2011.

Karen argues that no court has overturned or qualified the rule of *Morrison, supra*, 20 Cal.3d 437, which she characterizes as providing "generally [that] support in a long term marriage should not be terminated." She attempts to distinguish this court's decision in *Shaughnessy, supra*, 139 Cal.App.4th 1225, as well as others, by pointing out she was in her mid-fifties at the time of Thomas's modification hearing, had no formal education beyond high school, and had no degree on which she could begin to produce anything other than a lower class standard of living. She maintains the court acted punitively because it reached its decision based "solely" on her lack of reasonable effort in becoming self-sufficient.

We cannot agree with these contentions. Since *Morrison*, the California Supreme Court has recognized that the public policy of this state has progressed from one that had "entitled some women to lifelong alimony as a condition of the martial contract of support to one that entitles either spouse to postdissolution support for only so long as is necessary to become self-supporting." (*In re Marriage of Pendleton & Fireman, supra*, 24 Cal.4th at p. 53; see also *Marriage of Gavron, supra*, 203 Cal.App.3d at p. 711; *In re Marriage of Schmir, supra*, 134 Cal.App.4th at p. 54.) And, as Thomas points out, even *Morrison* recognized that "future modification hearings may well reveal that the supported spouse has found adequate employment, has delayed seeking employment, or has refused available employment. At that time, the court may appropriately consider

such factors in deciding whether or not to modify its original order." (*Morrison, supra*, 20 Cal.3d at p. 453.) *Morrison* contemplated that termination of support may be warranted where a supported spouse is not diligent in obtaining employment, as is the case here. In such cases, termination is warranted. (See, e.g., *In re Marriage of McElwee* (1988) 197 Cal.App.3d 902, 908-912 [termination of jurisdiction warranted where there were material changes in the supported spouses' financial circumstances (including that her children had left the family home and the family residence had appreciated); court observed that improvident management of investments could justify termination of support just as lack of diligence in seeking employment].)

But more fundamentally, Karen's argument would have us disregard the substantial evidence standard of review; she urges us to accept her version of the evidence and ignore Thomas's, including the evidence of her reduced needs due to cohabitation, investment income, and the vocational evaluator's opinion that given her skills and experience, she is capable of employment in more lucrative fields than her current handbag and jewelry sales. As in *In re Marriage of Baker*, Karen's "arguments on appeal, in effect, ask us to review the evidence anew, determine the weight to be given each factor listed in section [4320], and use our own independent judgment in deciding whether jurisdiction should be terminated in this case. This we cannot do. We are neither authorized nor inclined to substitute our judgment for the judgment of the trial court. Where the issue on appeal is whether the trial court abused its discretion, the showing necessary for reversal is insufficient if it merely emphasizes facts which afford an opportunity for a different opinion. [Karen] must show 'that no judge would

reasonably make the same order under the same circumstances.' [Citation.] [Karen] has not done so." (*In re Marriage of Baker, supra*, 3 Cal.App.4th at p. 498; see also *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 204 [it is not the appellate court's province to "reweigh the evidence," or to "substitute our judgment for that of the trial court"].) The evidence supports the court's finding that Karen has the ability to obtain employment and should be able to meet her financial needs by January 2011.

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.